

wall, ornamental chimney pieces, slabs, blinds, &c. And a tenant who is a nurseryman or gardener, may remove trees, shrubs, &c. All these things, although attached to the realty, are regarded as personal chattels in favour of creditors; and therefore are not affected to the prejudice of the tenant or his creditors, by a lien consequent upon a judgment against the landlord; but may be taken under an execution against the tenant by whom they were put upon the land. But they are only considered as chattels in favour of the tenant and his creditors during the term; for, after that time, if left upon the land, they become parcel of the inheritance. And they are only considered as chattels when placed upon the land by a tenant; for, if put there by the owner of the fee simple, they are then considered as parcel of the realty. As, however, there seems to be as yet no clear and well settled principles of law laid down in relation to what are commonly called fixtures, each case must depend on its own peculiar circumstances. (a)

It is in general true, that all the vegetable productions of the earth, while standing or growing upon the soil, are considered as parcel of the land itself. But they become mere personal property so soon as they are severed from it; and, as such, belong to the owner of the inheritance; unless they are at one and the same time severed and taken away. In which case, not having so rested upon the land, after having been severed, as to vest in the owner of the inheritance, in their new character of mere personalty, they are held to be a portion of the land. And consequently, in the one case, the wrong doer can only be treated as a trespasser, while in the other he may be charged either criminally or civilly with an illegal asportation of the goods and chattels of another. (b)

By the common law a creditor might take, under a *fieri facias*, the present annual profits of his debtor's land; that is, all fruits and crops growing, such as wheat, corn, tobacco, hemp, carrots, hops, &c., and when ripe he might have had them cut, gathered, and sold as any other mere personal property. As these fruits

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(a) Beck v. Rebow, 1 P. Will. 94; Dudley v. Warde, Amb. 113; Lawton v. Lawton, 3 Atk. 13; Poole's case, 1 Salk. 368; Fitzherbert v. Shaw, 1 H. Blac. 258; Elwes v. Maw, 3 East. 38; Wyndham v. Way, 4 Taunt. 316; Lee v. Risdon, 2 Com. Law Rep. 69; Bull. N. P. 34; Am. and Fer. Fixtures, ch. 2; Holmes v. Trempier, 20 John. 29; Van Ness v. Pacard, 2 Peter. 137; Steward v. Lombe, 5 Com. Law Rep. 168; Buckland v. Butterfield, 6 Com. Law Rep. 18; Farrant v. Thompson, 16 Com. Law Rep. 62.—(b) Heriakenden's case, 4 Co. 62.